

1. Claimant alleges that she injured her back working for the respondent from December 1997 through on or about February 9, 1998. Claimant also alleges that she reported that back injury to the respondent on or about February 9, 1998, when she returned to work after being off work for several days.
2. Claimant testified that she told her supervisor, Peggy Black, that she injured her back at work. Additionally, claimant presented the testimony of a co-worker, Kristie Griffith, who testified in January 2000 that she overheard a February 1998 conversation in which claimant's supervisor stated that claimant had to be cleared by respondent's medical department to return to work if she had a work-related injury.
3. Ms. Black testified that she has no recollection of claimant reporting the alleged work-related accident to her. Further, Ms. Black could not find in her records any incident report, which she would have prepared if claimant had notified her of a work-related injury.
4. Julia Ashpole, the registered nurse in respondent's medical department who processed claimant's return to work on February 9, 1998, testified unequivocally that claimant did not tell her that she had injured her back at work.
5. On February 9, 1998, while being cleared to return to work, claimant provided respondent's medical department two work release slips. The work release slip dated February 3, 1998, stated that claimant had been diagnosed as having a lumbar strain. The work release slip dated February 5, 1998, stated that claimant had been seen to recheck her back and that she was released to return to work without restrictions as of February 9, 1998. But neither slip indicated that claimant's back problem was related to work.
6. According to billing records and medical records introduced at the first preliminary hearing, which was held in February 1999, claimant went to her personal physician on February 3, February 5, and March 20, 1998. The February 3, 1998 records indicate that claimant had a history of lumbar pain and was diagnosed with lumbar strain. The February 5, 1998 medical records indicate that claimant's lumbar strain was improving and that she was being released to return to work as of February 9, 1998. Office notes from the March 20, 1998 office visit indicate that claimant returned to the doctor due to back pain, which claimant thought might be due to her kidneys. Neither those billing records nor the notes from the February and March visits relate claimant's back problems to work.
7. The outcome of this claim hinges in large part upon claimant's credibility. Judge Barnes observed claimant and all three of the other witnesses testify. After considering the evidence presented, the Judge found that claimant's testimony was not persuasive. In this instance, the Appeals Board gives some deference to the Judge's impressions of claimant's credibility and affirms the finding that claimant failed to prove that she reported her back injury to respondent on or about February 9, 1998.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.¹ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.²
3. The Workers Compensation Act requires a worker to provide the employer timely notice of a work-related accident or injury. The Act reads:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.³

Claimant does not argue that she had just cause that excused the failure to notify the respondent of the accidental injury within the first 10 days of the alleged incident.

4. Claimant has failed to prove that she provided the respondent with timely notice of the alleged accidental injury. Therefore, the request for benefits should be denied.

¹ K.S.A. 1999 Supp. 44-501(a).

² K.S.A. 1999 Supp. 44-508(g).

³ K.S.A. 44-520.

5. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Appeals Board affirms the January 10, 2000 preliminary hearing Order entered by Judge Nelsonna Potts Barnes.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Frederick L. Haag, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

⁴ K.S.A. 1999 Supp. 44-534a(a)(2).